(1)
Supreme Court, U.S.
FILED
MAR 4 - 2005
OFFICE OF THE CLERK

No. 041191

In The

Supreme Court of the United States

JOYCE MORGAN, *et al.*,

Petitioners,

versus

SKF USA, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

PHILIP C. KIMBALL
1970 Douglass Boulevard
Louisville, KY 40205
(502) 454-4479

Attorney for Petitioners

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Under the Employee Retirement Income Security Act (ERISA), pension and benefit plans may vest their administrators with broad discretion to interpret the language and provisions of the plan in acting upon plan members' claims for benefits.

In such cases, of which this is one, judicial review of a plan administrator's denial of benefits is limited to a determination of whether the denial is arbitrary and capricious. *Firestone Tire and Rubber Co. v. Bruch*, 480 U.S. 101 (1989).

It is apparent upon the face of the opinion of the court of appeals in this case that the court has ratified a plan administrator's denial of benefits that is arbitrary and capricious.

Because of this, the opinion appears: 1) to sanction a complete abandonment of any meaningful standards for the judicial review of actions of those who administer plans governed by ERISA; and 2) to convert the determination of whether an ERISA governed plan administrator has denied benefits arbitrarily and capriciously to a mere "rubber stamping" of his actions and reasoning.

The central question presented for review in this case is: What are the parameters of judicial review that is limited to a determination of whether or not an ERISA governed plan administrator's denial of benefits or interpretation of plan language is arbitrary and capricious?

A subsidiary question presented for review is: Are the federal courts bound to apply federal common law rules of contract construction in determining whether an ERISA

QUESTIONS PRESENTED – Continued

governed plan administrator's denial of benefits or interpretation of plan language is arbitrary and capricious?

A subsidiary question presented for review is: May an ERISA governed plan administrator engraft limiting terms upon the word "layoff" in order to avoid paying benefits to plan members who were obviously laid off, where his doing so violates federal common law rules of contract construction?

A subsidiary question presented for review is: May an ERISA governed plan administrator interpret an unambiguous term by insisting that it is really ambiguous; and if the term is ambiguous, may he ignore the federal common law rule of contract construction that requires all ambiguities in plan language to be construed against the drafter of the plan, and therefore in favor of those claiming benefits under the plan?

LIST OF PARTIES

Petitioners:

Joyce Morgan, Eva Deckerd, Ray Shaw, Jr., Wilma Capps, William Houchens, Selby Shirley, Bobby Deckard, Donald Bennett, Mickel Muse, John Wilkerson, Louis Bennett, Edward J. Claywell, Charles Coffey, Jim Elmore, Jackie Shoopman, William Groce, Ed Madison, Bob Key, Albert Dilley, Clarence Jessie, Larry Russell, Eugene Moss, Ken Wininger, Darrell Thomas, Larry Anderson, Sammy Hunt, Donald Isenberg, Stephen Powell, Tony Richey, Roger Hagan, Mitchell Thompson, David Ford, Duane Asply, Kenneth England, Hugh Turner, Roger Judd, Larry Shaw, Gary Raney, Maxie Shirley, Connie Eaton, Jimmy Moore, Neil Samson, Charles Walker, Jerry Agers, Bobby Belcher, Dean McFarland, Carol Craine, Calvin Greg Muse, Donald Coats, Chester Bennett, Kay Turner, Steve Williams, Wayne Harlow, James Lawson, Brenda Reece, Harold Landrum, Peggy Barrett, Benny Wood, Terry Saltsman, Michael Harper, Tommy Forbes, Lester Johnson, Jimmy Reece, Tony Garman, James Alexander, Todd Esters, Ken Gramlin, Jerry Bowles, Ricky Martin, James Martin, Eddie W. Headrick, Tommy Sexton, Ricky Ervin

Respondent:

SKF USA, INC.

TABLE OF CONTENTS

Page

Questions Presented i

List of Parties iii

Table of Contents iv

Table of Authorities v

Opinions and Orders Below 1

Statement of Jurisdiction 2

Statutory Provision Involved 2

Statement of the Case 2

Argument (Reasons for Granting the Writ) 5

Conclusion 13

Appendix:

Opinion of the United States Court of Appeals for the Sixth Circuit, decided October 8, 2004 ..... App. 1

Memorandum Opinion and Order of the United States District Court for Western Kentucky, entered June 17, 2003 ..... App. 9

Judgment of the United States District Court for Western Kentucky, entered June 17, 2003 ..... App. 21

Order of the United States District Court for Western Kentucky, entered August 5, 2003 ..... App. 23

Order of the United States Court of Appeals for the Sixth Circuit, filed December 7, 2004 ..... App. 25

TABLE OF AUTHORITIES

Page

CASES:

Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101 (1989) i

Fishgold v. Sullivan Drydock Repair Corp., 328 U.S. 275 (1946) 13

Gallo v. Madera, 136 F.3d. 326 (6th Cir., 1998) 12

Perez v. Aetna Life Insurance Co., 150 F.3d 550 (6th Cir., 1998), en banc 6, 11

Ross v. Pension Plan for Hourly Employees of SKF Indus., Inc., 847 F.2d 239 (6th Cir., 1988) 10

Rowe v. Allied Chemical Hourly Employees Pension Plan, 915 F.2d 266 (6th Cir., 1990) 7, 11

Shelby County Health Care Corp. v. S. Council of Indus. Workers Health and Welfare Trust Fund, 203 F.3d 926 (6th Cir., 2000) 10

STATUTES:

28 U.S.C. §1254(1) 2

28 U.S.C. §1331 5

28 U.S.C. §1332 5

28 U.S.C. §1441 5

29 U.S.C. §1132(a)(1)(B) 2, 4

RULES OF THE SUPREME COURT OF THE UNITED STATES:

Rule 10(c) 6

TABLE OF AUTHORITIES – Continued

Page

Federal Rules of Civil Procedure

Rule 12(b)(6) 5

Rule 59(e) 1

OTHER AUTHORITIES:

Black's Law Dictionary (7th Ed., 1999), definition of "layoff" 9

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS AND ORDERS BELOW

The district court's opinion (per McKinley, D.J.) granting respondent's motion to dismiss for failure to state a claim upon which relief may be granted appears at pages 9 to 20 of the appendix to the petition.

It was entered, along with a judgment of dismissal, which appears at page 21 of the appendix, on June 17, 2003.

The district court's order, without opinion, denying the petitioners' Rule 59(e) motion to set aside the judgment of June 17, 2003, was entered on August 4, 2003, and appears at page 23 of the appendix.

The court of appeals' opinion (per Guy, C.J., joined by Sutton, C.J., and Carr, D.J. for Northern Ohio, sitting by designation), is published at 385 F.3d 989 and was entered on October 8, 2004. It appears at pages 1 to 7 of the appendix.

The court of appeals' judgment affirming the judgment of the district court, was entered on October 8, 2004 and appears at page 8 of the appendix.

The court of appeals order denying rehearing and rehearing en banc was entered on December 7, 2004 and appears at page 25 of the appendix.

STATEMENT OF JURISDICTION

The court of appeals entered its opinion and its judgment on October 8, 2004 and denied rehearing and rehearing en banc on December 7, 2004. Petitioners invoke this Court's jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

29 U.S.C. §1132(a)(1)(B) of the Employee Retirement Income Security Act (ERISA) states as follows:

> §1132 Civil Enforcement.
>
> (a) Persons empowered to bring a civil action.
>
> A civil action may be brought –
>
> 1. By a participant or beneficiary –
>
> . . .
>
> (B) To recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

STATEMENT OF THE CASE

Petitioners were hourly employees of the respondent, SKF USA, Inc. (SKF) at its Glasgow, Kentucky, tapered roller bearing factory until June 11, 1999. That was the effective date of SKF's sale of the factory to Tyson Bearing Company, Inc. Tyson continued operating the tapered

bearing facility as before and continued to employ almost all of the former SKF employees, including all of the petitioners.

Tyson agreed to provide a pension plan of its own for the former SKF employees. However, as the opinion of the court of appeals noted (Petitioner's Appendix, hereinafter APX, P. 2-3), petitioners, " . . . allege there was no agreement to merge the two pension plans to guarantee that there was absolutely no change in their pension status."

Indeed, Tyson specifically insisted in its agreement with SKF that there would be:

> . . . no combination between SKF and RBC [Tyson] with respect to pension service. All such service [with SKF] ceases at the time of the sale of the plant from SKF to RBC (Petitioners' Complaint, attached Pension Plan documents, P. 11; Joint Appendix for the court of appeals, P. 40).

Upon SKF's discharge of them, one group of petitioners filed claims for pension benefits with the SKF pension plan administrator under §4.05 of the plan. Another group sought benefits under §4.02 and §2.3303(c) and or (d) of the plan.

In both instances, SKF employees' entitlement to a pension benefit was triggered if the employees', " . . . active service ceases by reason of a layoff or permanent shutdown of the plant," where the employees worked, (APX, P. 3).

§4.05 of the SKF pension plan also provided that:

> A member shall not be entitled to an immediate pension under this §4.05 if he should refuse to

> return to work when recalled by an employer [i.e., SKF] (APX, P. 3).

The SKF pension fund plan administrator denied the petitioners' claims for benefits under the plan. He asserted that the petitioners:

> . . . did not experience a layoff because [they] did not have any period of unemployment or interruption of wages as a result of the sale [of the tapered roller bearing factory from SKF to Tyson] (APX, P. 4).

In addition, the SKF pension fund plan administrator rejected the petitioners' claims because, in his opinion:

> . . . the terms "layoff" and "permanent shutdown" have a special meaning under the collective bargaining agreement . . . [which] reflects that the term layoff indicates that an employee has recall rights, i.e. the right to a position before other individuals may apply. We have been advised that none of your clients have recall rights with respect to any Company facility (APX, P. 4)

Obviously, the absence of "recall rights" meant that the petitioners had been permanently laid off. What the plan administrator was saying, therefore, was that the petitioners would have been entitled to pension benefits only if they had undergone, " . . . a temporary termination of employment," as the court of appeals put it (APX, P. 7).

* * *

Petitioners filed this action in the Barren Circuit Court of the Commonwealth of Kentucky, pursuant to the enforcement provisions of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1132(a)(1)(B).

The respondent, SKF, removed the case to the United States District Court for Western Kentucky at Bowling Green, pursuant to the federal question removal statute, 28 U.S.C. §1331, the diversity of citizenship removal statute, 28 U.S.C. §1332; and the general removal statute, 28 U.S.C. §1441.

The respondent's only responsive pleading to the lawsuit was an FRCP 12(b)(6) motion to dismiss for failure to state a claim upon which relief may be granted (APX, P. 5).

On June 17, 2003, the district court granted the respondent's motion to dismiss (APX, Pp. 9-21). On August 5, 2003, it denied the respondent's FRCP 59(e) motion to set aside the Order dismissing (APX, P. 23).

Petitioners appealed to the United States Court of Appeals for the Sixth Circuit. On October 8, 2004, the court of appeals filed its opinion affirming the judgment of the district court (APX, Pp. 1-8). Petitioners then moved for a panel or en banc rehearing of the opinion of the court of appeals. The court denied their petition on December 7, 2004 (APX, P. 25).

ARGUMENT

(REASONS FOR GRANTING THE WRIT)

The petition should be granted in order to clarify the existence, and proper application, of standards of judicial review for determining under what circumstances benefit plan administrators have acted arbitrarily and capriciously in denying claims for benefits under plans governed by the Employee Retirement Income Security Act (ERISA).

There is a considerable body of, " . . . federal common law rules of contract interpretation," to which the courts should look in cases such as this; *Perez v. Aetna Life Insurance Co.,* 150 P.3d 550, 556 (6th Cir., 1998), en banc.

As we shall see, the Sixth Circuit did not follow these rules in deciding this case. Indeed, it ignored, and therefore at least implicitly rejected, several of the most important of these rules. The result is that the opinion of the Sixth Circuit appears to stand for the propositions that there are no meaningful standards for determining if an action is arbitrary and capricious: that plan administrators can deny benefits by simply articulating any "reason" for doing so; and that they can interpret plan language in any manner that they see fit. In other words, ERISA governed plan administrators can act arbitrarily and capriciously and the courts of this nation will do nothing to stop them.

Millions of Americans participate in pension and benefit plans governed by the various provisions of ERISA. These plans are worthless to all of the employees "covered" by them if those who administer the plans have unfettered discretion to ignore the language of the plans and to deny benefits. The issue presented in this case is therefore one of great public importance, and this Court should conclusively settle it, Supreme Court Rule 10(c).

In this case, as we have seen, the SKF plan administrator justified his denial of the petitioners' claim for an immediate vested pension based upon his definition of the word "layoff" as meaning only a layoff accompanied by unemployment or a temporary layoff.

The courts below approved the "accompanied by unemployment" definition upon the basis of the case of

Rowe v. Allied Chemical Hourly Employees Pension Plan, 915 F.2d 266, 269 (6th Cir., 1990) The court of appeals opined that *Rowe* supports the proposition that a layoff does not occur:

> . . . where there was no interruption in the plaintiffs' employment because they immediately became employees of the purchasing company upon completion of the sale [of a plant or factory from one owner to another] (APX, P. 6)

It is true that *Rowe* does stand for this proposition, but only if the second (buyer) employer is a "successor" employer to the first one, *Rowe, Id.*, at 269.

An analysis of the facts in *Rowe* indicates that Tyson was not a "successor" employer to SKF for pension purposes.

In *Rowe,* the successor employer, Armco, agreed with the plant seller, Allied Corporation, to "mesh" its pension plan with that of Allied. The result was that there was absolutely *no change* in employees' pension benefits and entitlements because of the plant sale. *Id.,* at 268. As the Court itself described this situation:

> All former Allied employees could elect to receive benefits in the future under the Armco plan [which was identical to the "80 point" Allied pension plan] based on the entire length of Allied-Armco service, or they could elect the pension entitlement accrued with Allied as of the sale date, plus any benefits they might accrue with Armco subsequent to the sale, *Id.*

In the case at bar, on the other hand, petitioners have not even been permitted to elect the pension entitlement that they accrued with the respondent, SKF! Also, as we

have seen, their old employer, SKF, specifically agreed with their new employer, Tyson, that Tyson would not have to "combine" its pension plan or benefits in any manner with SKF's.

For pension purposes, the employees in *Rowe* were not "laid off" at all. Even though they had a new employer, it was as if they continued to work for their old employer as far as their pensions were concerned.

Since the same is not true in this case, the *Rowe* opinion does not support the theory of the SKF plan administrator and the Courts below that the petitioners were not laid off simply because they suffered no break in employment upon SKF's terminating their employment.

* * *

The second reason advanced by the plan administrator and the Courts below for their conclusion that SKF did not "lay off" the petitioners is also untenable. This purported reason is that the term "layoff" in the SKF pension plan really means only a "temporary layoff."

No employer could afford the expense and disruption to his work force that would result from permitting temporarily laid off workers to claim a valuable early retirement benefit!

That this is so, and that SKF was quite aware of this, is apparent by the last sentence of §4.05 of the plan itself. As we have seen, this sentence provides that employees are *not* entitled to the pension benefit described in the section itself if they, " . . . should refuse to return to work when recalled by an Employer," (APX, P. 3).

If temporarily laid off employees (i.e. those with "recall rights") were entitled to a pension under §4.05, the last sentence of the provision would, of necessity, require a *forfeiture.* Instead, the language clearly anticipates, and provides for, what common sense dictates: the prohibition of any *entitlement* to a pension in the future by employees who are temporarily laid off.

In fact, the last sentence of §4.05 indicates that one of the purposes of the benefit set forth in the paragraph was to serve as a "carrot," so that temporarily laid off employees would come back to work instead of simply giving up their jobs. The purpose of both the pension described in §4.05 and its requirement that workers return to work after a temporary layoff if they ever wanted to see the pension was obviously designed to prevent a disruption of SKF's workforce. As noted above, this purpose would hardly be served by permitting temporarily laid off workers to get the early retirement benefit described in §4.05!

The plain meaning of the word layoff, as used in the SKF Pension Plan, is obviously not "temporary layoff," any more than it is "layoff with unemployment."

Further evidence of this fact is the commonly accepted definition of the word "layoff." It is, as the court of appeals acknowledged:

> The termination of employment at the employer's instigation; especially the termination – either temporary or permanent – of a large number of employees in a short time,

Black's Law Dictionary (7th Ed., 1999).

Because of the "employer's instigation" element of this definition, of course, the word layoff is not synonymous

with "unemployment," and does not mean "layoff with unemployment." Obviously an individual can be "laid off" from his work with employer A while working for employer B!

Because the definition encompasses both types of layoff – temporary and permanent – SKF cannot maintain that its use of the word layoff, by itself, means "temporary layoff."

* * *

The court of appeals did correctly state that a plan administrator acts arbitrarily and capriciously if he fails to, " . . . adhere to the plain meaning of [plan] language as it would be construed by an ordinary person," citing *Shelby County Health Care Corp. v. S. Council of Indus. Workers Health and Welfare Trust Fund*, 203 F.3d 926, 934 (6th Cir., 2000) [APX, P. 5]. The court also acknowledged that a plan administrator must interpret plan language rationally in order to avoid being arbitrary and capricious, citing *Ross v. Pension Plan for Hourly Employees of SKF Indus., Inc.*, 847 F.2d 329, 334 (6th Cir., 1988) [APX, Pp. 5-6]. These are two of the, " . . . federal common law rules of contract interpretation," that the courts should apply in cases such as this, *Perez*, *supra*, at 556.

The court of appeal's clearly misapplied these principles. By itself, of course, this might not be enough to justify the granting of this petition.

However, as petitioners have previously argued, the effect of the opinion of the court of appeals is to sanction plan administrators' unbridled discretion in making benefit determinations under ERISA governed pension and benefit plans. Such unlimited discretion, obviously, often leads to arbitrary and capricious decisions, such as the one which the petitioners are challenging in this case.

The court of appeals' sanctioning of the SKF plan administrator's arbitrary and capricious denial of petitioners claim for pension benefits is apparent upon the face of the court's opinion.

The opinion recites plan language – the last sentence of §4.05 – that clearly indicates that temporarily laid off workers are not entitled to benefits under §4.05. The opinion then approves the SKF plan administrator's conclusion that only temporarily laid off workers are entitled to benefits under §4.05.

The opinion recites the correct definition of "lay off." The opinion then approves the plan administrator's incorrect definition of "lay off."

The opinion cites *Rowe, supra,* for the proposition that the petitioners were not laid off for pension purposes because they were able to continue working for an employer other than SKF. The opinion acknowledges that the petitioners have argued that *Rowe,* "... applies only where the successor employer agrees to continue the pension plan so as not to affect the employees' pension benefits," (APX, P. 6). Anybody who reads *Rowe* will see that the petitioners' interpretation of *Rowe* is likely the correct one.

Furthermore, the opinion of the court of appeals completely ignored two of the federal common law rules of contract interpretation. These two rules are quite specific. When applied to the facts of this case, these two rules dictate what should be its proper outcome: a conclusion that the SKF plan administrator's denial of pension benefits to the petitioners was arbitrary and capricious.

The first of these federal common law rules of contract interpretation that the court of appeals ignored in its opinion was set out in *Gallo v. Madera,* 136 F.3d 326, 330 (6th Cir., 1998):

> Even when trustees of a pension plan are entitled to deference in interpreting the terms of the plan, deference cannot be so broad as to permit them to engraft additional requirements on to unambiguous plan definitions.

Of course, that is precisely what the SKF plan administrator did in this case. He "engrafted" the "additional requirements" of temporariness and unemployment upon the unambiguous plan term of "lay-off."

If SKF had wanted the word "layoff" to mean "temporary lay off," it could easily have said so in its pension plan. If SKF had wanted the word "layoff" to mean "layoff accompanied by unemployment," it could have said so; *or* it could have changed the terms of the plan so that pension entitlements were not triggered, " . . . by reason of a layoff or a permanent shutdown of the plant," but, " . . . by reason of a layoff *and* a permanent shutdown of the plant."

This brings us to the second rule of the federal common law rules of contract interpretation that the court of appeals ignored in its opinion. It is the rule of "contra proferentum," and it:

> . . . provides that ambiguous contract provisions in ERISA governed insurance contracts should be construed against the drafting party,

Perez, supra, 150 F.3d at 557, note 7.

Under this rule of interpretation, the SKF plan administrator was not entitled to transform the word

"layoff" into something much narrower, as he in fact did, with the approval of the courts below.

* * *

Nothing in *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946) undermines the petitioners' position in this case. The issue before the court in that case was how to reconcile the terms "discharge" and "layoff" in a law that has since been repealed (APX, P. 7). Obviously, if the word "layoff" has a meaning distinct from the word "discharge," it is when it is used to mean "temporary layoff," as a "permanent layoff" is but one form of discharge. A "temporary layoff," on the other hand, really only becomes a "discharge" when it becomes apparent that the employer has no intention of ever recalling the laid off employee to work. At this point, of course, it becomes a permanent layoff as well as a discharge. *Fishgold* hardly stands for the proposition that the word "layoff" means only "temporary layoff."

CONCLUSION

For the foregoing reasons, this petition should be granted.

Respectfully Submitted,

PHILIP C. KIMBALL
Attorney for Petitioners
1970 Douglass Boulevard
Louisville, KY 40205
(502) 454-4479

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

File Name: 04a0348p.06

UNITED STATES COURTS OF APPEALS

FOR THE SIXTH CIRCUIT

JOYCE MORGAN, et al., *Plaintiffs-Appellants,* *v.* SKF USA, INC., *Defendant-Appellee.*	No. 03-6152

Appeal from the United States District Court for the Western District of Kentucky at Bowling Green. No. 03-00031 – Joseph H. McKinley, Jr., District Judge.

Argued: September 14, 2004.

Decided and Filed: October 8, 2004.

Before: GUY and SUTTON, Circuit Judges; CARR, District Judge.*

COUNSEL

ARGUED: Philip C. Kimball, Louisville, Kentucky, for Appellants. Michael H. Rosenthal, PEPPER, HAMILTON, Philadelphia, Pennsylvania, for Appellee. **ON BRIEF:** Philip C. Kimball, Louisville, Kentucky, for Appellants.

---

* The Honorable James G. Carr, United States District Judge for the Northern District of Ohio, sitting by designation.

Michael H. Rosenthal, Stephen J. Sundheim, PEPPER, HAMILTON, Philadelphia, Pennsylvania, for Appellee.

OPINION

RALPH B. GUY, JR., Circuit Judge. Plaintiffs, former employees of defendant, SKF USA Inc. (SKF), brought this action under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132(a)(1)(B), seeking pension benefits under SKF's Pension Plan for Hourly Employees (SKF Plan). Plaintiffs appeal from the order of the district court granting SKF's motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6). After review of the record, the applicable law, and the arguments presented on appeal, we affirm.

I.

Plaintiffs were employed by SKF until June 11, 1999, in SKF's tapered roller bearing division in Glasgow, Kentucky. On June 11, 1999, SKF sold this division to Tyson Bearing Company (Tyson). Plaintiffs became employees of Tyson immediately after the sale at the same facility with no period of unemployment or interruption of wages.[1] Under the terms of the sale, Tyson agreed to provide a pension plan equivalent to the SKF Plan, but plaintiffs allege that there was no agreement to merge the

---

[1] Plaintiffs state that some employees received a lower wage and lost vacation time. The district court's opinion states that this applied only to persons who retired from SKF and then were rehired by Tyson. The appendix contains a memorandum of agreement between Tyson and the AFL-CIO which supports the district court's statement.

two pension plans to guarantee that there was absolutely no change in their pension status.

Plaintiffs subsequently filed claims with the SKF Plan. Plaintiffs argued that they were entitled to pension benefits because they were "laid off" from their SKF employment as a result of the June 11, 1999 sale.

One group of plaintiffs claimed they were entitled to immediate, unreduced pensions under § 4.05 of the SKF Plan, which provides:

> 4.05 *Immediate Vested Retirement.* Any member employed at a Location to which this Section 4.05 applies, as shown on Attachment "A," whose active service with an Employer ceases by reason of a layoff or a permanent shutdown of the plant at such Location, or a department or subdivision thereof, and who, at the date of such cessation of service, or thereafter by reason of the provisions of Section 2.3303(d), shall have attained a service and age combination listed on Attachment "A" for such Location, shall be entitled, by giving written notice to his Employer, to retire at the later of such date, such attainment or the expiration of his recall rights and receive an immediate pension. A Member shall not be entitled to an immediate pension under this Section 4.05 if he should refuse to return to work when recalled by an Employer.

Another group claimed they were entitled to unreduced pensions during a three-year period beginning June 11, 1999, under § 4.02 and § 2.3303(c) and/or (d) of the

SKF Plan. Sections 2.3303(c) and (d) provide that service includes a "period of layoff" under certain circumstances.[2]

After a hearing was held, the plan administrator denied plaintiffs' claims. The plan administrator concluded that plaintiffs were not "laid off" when they became employees of Tyson immediately after the sale:

> The terms "layoff" and "permanent shutdown" are not defined in the Plan and, for this reason, we have accorded such terms their plain meaning. Your clients did not experience a layoff because your clients did not have any period of unemployment or interruption of wages as a result of the sale. The buyer assumed the Collective Bargaining Agreement that was in effect with respect to your clients immediately before the sale and implemented a pension plan with terms essentially identical to those of the Plan. . . .
>
> We have considered whether the terms "layoff" and "permanent shutdown" have a special meaning under the Collective Bargaining Agreement. . . . [T]he Collective Bargaining Agreement reflects that the term "layoff" indicates that an employee has recall rights, *i.e.*, the right to a position before other individuals may apply. We have been advised that none of your clients have recall rights with respect to any Company facility.

The plan administrator also found that there was no permanent shutdown because the Kentucky facility remained in continuous operation. Plaintiffs do not challenge the finding of no permanent shutdown.

---

[2] A third group of plaintiffs withdrew their claims after SKF's motion to dismiss was filed.

Plaintiffs filed this action in Kentucky state court, and SKF removed the case to federal court. On June 17, 2003, the district court granted SKF's motion to dismiss for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6). The district court found that the sale of SKF's division to Tyson did not result in a layoff under established Sixth Circuit precedent. This appeal followed.

II.

We use a *de novo* standard in reviewing whether a district court properly dismissed a claim pursuant to Fed.R.Civ.P. 12(b)(6). *Pratt v. Ventas, Inc.*, 365 F.3d 514, 518-19 (6th Cir. 2004). A motion to dismiss may be granted "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Id.* at 519 (internal quotation marks and citation omitted).

The parties agree that our review of the plan administrator's decision is limited to a determination of whether the denial of benefits was arbitrary and capricious. *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *Miller v. Metro. Life Ins. Co.*, 925 F.2d 979, 984 (6th Cir. 1991) (where plan administrator is given discretionary authority to construe terms of the plan, judicial review is limited to whether the decision was arbitrary and capricious). In interpreting a plan, the administrator must adhere to the plain meaning of its language as it would be construed by an ordinary person. *Shelby County Health Care Corp. v. S. Council of Indus. Workers Health and Welfare Trust Fund*, 203 F.3d 926, 934 (6th Cir. 2000). We must accept a plan administrator's rational interpretation of a plan even in the face of an equally rational interpretation

offered by the participants. *Ross v. Pension Plan for Hourly Employees of SKF Indus., Inc.,* 847 F.2d 329, 334 (6th Cir. 1988).

Plaintiffs rely on the definition in Black's Law Dictionary to argue that the permanent termination of their employment with SKF constituted a "layoff" under the plain and ordinary meaning of that term:

> A termination of employment at the will of employer. Such may be temporary (e.g. caused by seasonal or adverse economic conditions) or permanent.

BLACK'S LAW DICTIONARY 888 (6th Ed.1990).[3]

The issue presented in this case, however, has already been decided in this circuit contrary to plaintiffs' position. In *Rowe v. Allied Chemical Hourly Employees' Pension Plan,* 915 F.2d 266, 269 (6th Cir. 1990), we held that the separation of employees from their original employment and immediate employment by the company purchasing the original employer's facility did not constitute a layoff. Plaintiffs attempt to limit *Rowe* by arguing that it applies only where the successor employer agrees to continue the pension plan so as not to affect the employees' pension benefits. We agree with the district court, however, that *Rowe* should not be read so narrowly. The key to that decision is that there was no interruption in the plaintiffs'

---

[3] The definition of layoff was revised in the Seventh Edition of Black's Law Dictionary: "The termination of employment at the employer's instigation; esp., the termination – either temporary or permanent – of a large number of employees in a short time." BLACK'S LAW DICTIONARY 896 (7th Ed. 1999).

employment because they immediately became employees of the purchasing company upon completion of the sale.

Moreover, we must remember that plaintiffs are not entitled to relief unless they can show that the plan administrator's decision was arbitrary and capricious. The plan administrator's interpretation of layoff is supported both by the case law and the language of the SKF Plan itself. In *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946), the Supreme Court was interpreting the term "discharge" under the Selective Training and Service Act of 1940, 50 U.S.C. § 301 (repealed 1955). In distinguishing a layoff from a discharge, the Supreme Court noted that a layoff is defined as "A period during which a workman is temporarily dismissed or allowed to leave his work; that part or season of the year during which activity in a particular business or game is partly or completely suspended; an off-season." *Id.* at 287 n.11 (internal quotation marks and citation omitted).

The terms of the SKF Plan also support the administrator's interpretation of layoff as a temporary termination of employment. Section 4.05 states that a member is not entitled to an immediate pension if he refuses to return to work when recalled by his employer. Even though plaintiffs may have presented an equally rational interpretation of layoff, we cannot say that the plan administrator acted arbitrarily or capriciously in deciding that layoff means a temporary termination or interruption in employment. It is clear, therefore, that no relief could be granted under any set of facts that could be proved consistent with the allegations in plaintiffs' complaint, and the district court did not err in granting the motion to dismiss.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 03-6152

JOYCE MORGAN, et al.,
Plaintiffs-Appellants,

v.

SKF USA, INC.,
Defendant-Appellee.

Before: GUY and SUTTON,
Circuit Judges; CARR, District Judge.

JUDGMENT

(Filed Oct. 8, 2004)

On Appeal from the United States District Court
for the Western District of Kentucky at Bowling Green

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
[Illegible initials]
Leonard Green, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

CIVIL ACTION NO. 1:03CV-31-M

JOYCE MORGAN, et al. **PLAINTIFFS**

v. **MEMORANDUM OPINION AND ORDER**

(Filed June 17, 2003)

SKF USA, INC **DEFENDANT**

* * * * * * * * * * * *

This matter is before the Court upon a motion by Defendant, SKF USA, Inc., to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) [DN 4]. Plaintiffs are former employees of the Tapered Roller Bearings Unit ("TRB") of SKF USA Inc. ("SKF") who seek benefits under the Pension Plan for Hourly Employees of SKF USA Inc. ("the Plan"). Plaintiffs filed their Complaint under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S. §§ 1001-1461, claiming that the Plan Administrator improperly denied their claim. Fully briefed, this matter is ripe for decision. For the reasons discussed below, Defendant's Motion to Dismiss is granted.

STATEMENT OF FACTS

On June 11, 1999, SKF sold the TRB Division to Tyson Roller Bearing Company, Inc. ("RBC"), an unrelated third party. Plaintiffs continued to work at the Glasgow facility for RBC after the sale – there was no period of unemployment or interruption of wages. However, according to Plaintiffs, some employees who retired from SKF and then continued to work for RBC were forced to take a cut in pay and lost vacation time. Plaintiffs subsequently filed a

claim for unreduced pension benefits with the Plan based on the events of June 11, 1999. Specifically, Plaintiffs claim that the Plan provides special pension benefits to SKF employees who lose work because of a "layoff" or "permanent shutdown" of a manufacturing plant. On June 20, 2002, the Plan Administrator held a hearing on the claims and subsequently concluded that Plaintiffs were not entitled to the benefits they requested.

As a result of the Plan Administrator's decision, Plaintiffs filed their Complaint challenging the denial of pension benefits. Defendant has now filed this motion to dismiss arguing that Plaintiffs' claims should be dismissed for two reasons. First, Defendant maintains that based on the plain meaning of the terms "layoff" and "permanent shutdown," Plaintiffs are not entitled to additional benefits because SKF did not layoff Plaintiffs or shut down the Glasgow, Kentucky, manufacturing plant where they worked. Second, Defendant contends that the Plan Administrator is entitled to broad deference in interpreting the Plan and its decision was rational.

STANDARD OF REVIEW

Upon a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P 12(b)(6), the Court must construe the complaint in a light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of its claim that would entitle it to relief. *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996), *cert. denied*, 520 U.S. 1251 (1997). A judge may not grant a Fed. R. Civ. P. 12(b)(6) motion based on a disbelief of a complaint's factual allegations. *Wright v.*

MetroHealth Medical Center, 58 F.3d 1130, 1138 (6th Cir. 1995), *cert. denied,* 516 U.S. 1158 (1996). A Fed. R. Civ, P. 12(b)(6) motion tests whether the plaintiff has stated a claim for which the law provides relief. *Gazette v. City of Pontiac,* 41 F.3d 1061, 1064 (6th Cir. 1994).

Both parties acknowledge that this matter is governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.* Although ERISA expressly provides for a private cause of action to recover benefits alleged to be due under a benefit plan, the statute is silent as to the standard of review which the Court is to apply in reaching a decision on the merits of such a claim. In order to determine the appropriate standard of review, the Court must ascertain whether the plan has vested Defendant with discretion to determine eligibility for benefits or to construe the terms of the plan. A plan administrator's denial of benefits under an ERISA plan "is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone Tire and Rubber Co. v. Bruch,* 489 U.S. 101, 115 (1989). *See also Wilkins v. Baptist Healthcare System, Inc.,* 150 F.3d 609, 613 (6th Cir. 1998). On the other hand, if the plan vests discretionary authority in the plan administrator, the Court reviews the denial of benefits under an arbitrary and capricious standard of review. *See Perez v. Aetna Life Ins. Co.,* 150 F.3d 550, 555 (6th Cir. 1998) (en banc); *Wilkins,* 150 F.3d at 613. Both parties agree that the arbitrary and capricious standard of review applies in this case.[1] Therefore,

---

[1] The language in the Pension Plan for Hourly Employees of SKF USA Inc. provides in relevant part as follows:

(Continued on following page)

the Plan Administrator's interpretation of the Plan, resulting in the denial of benefits, must be affirmed unless it is arbitrary and capricious.

"The arbitrary and capricious standard is the least demanding form of judicial review." *Hunter v. Caliber Systems, Inc.*, 220 F.3d 702, 709-10 (6th Cir. 2000). A determination by the administrator to deny benefits which is based upon a reasoned explanation for the outcome and rational in light of the plan provisions must be upheld. *Broussard v. Continental Casualty Co.*, 2002 WL 1577767, *3 (W.D. Ky. July 16, 2002) (citing *Williams v. International Paper Co.*, 227 F.3d 706, 712 (6th Cir. 2000)). *See also Killian v. Heathsource Provident Administrators, Inc.*, 152 F.3d 514, 520 (6th Cir. 1998). In other words, a decision is not arbitrary and capricious "if it is based on a reasonable interpretation of the plan." *Shelby County Health Care Corp. v. Southern Council of Indus. Workers Health and Welfare Trust Fund*, 203 F.3d 926, 933 (6th Cir. 2000) (citing *Johnson v. Eaton Corp.*, 970 F.2d 1569, 1574 (6th Cir. 1992)). "In interpreting the provisions of a plan, a plan administrator must adhere to the plain meaning of its language, as it would be construed by an ordinary person." *Shelby County Health Care*, 203 F.3d at 934.

> The Plan Administrator shall further have the power and discretion, to the exclusion of all other persons, to interpret the provisions of this instrument; to decide any dispute which may arise hereunder; to determine all questions that shall arise under the Plan, including, without limitation, questions as to the rights of Employees to become Members and the rights of Members . . .

Pension Plan for Hourly Employees of SKF USA, Inc., § 11.02.

DISCUSSION

According to the Complaint, Plaintiffs are divided into three groups. The first group ("Group 1") claims they are entitled to an immediate, unreduced pension under section 4.05 of the Plan as modified by Attachment "A." The second group ("Group 2") claims they are entitled to an immediate unreduced pension under section 4.02 of the Plan and the Memorandum of Understanding ("MOU"). The third group ("Group 3") claims they are entitled to an unreduced pension at some later date based on sections 4.02 and 2.3303(c) and/or (d) as modified by Attachment "A." Complaint at ¶ 5.

Claims under Section 4.05 of the Plan

Plaintiffs in Group 1 claim that they are entitled to benefits under section 4.05 of the Plan which provides in part as follows:

> *Immediate Vested Retirement.* Any Member employed at a Location to which this Section 4.05 applies, as shown on Attachment "A," *whose active service with an Employer ceases by reason of a layoff or a permanent shutdown of the plant* at such Location, or a department or subdivision thereof, and who, at the date of such cessation of service, or thereafter by reason of the provisions of Section 2.3303(d), shall have attained a service and age combination listed on Attachment "A" for such Location, shall be entitled, by giving written notice to his Employer, to retire at the later of such date, such attainment or the expiration of his recall rights and receive an immediate pension. A Member shall not be entitled to an immediate pension under this Section 4.05 if he should

> refuse to return to work when recalled by an Employer.

Section 4-05 (emphasis added). Under Attachment "A," a Member must have at least 15 years of Benefit Service and have attained age 55 or have at least 15 years of Benefit Service and a combined age and years of Benefit Service equal to 80 or more. However, this age and service requirement in this provision only becomes relevant if the termination of employment resulted from a "layoff" or "permanent shutdown" of the Glasgow facility.

In determining whether the Plaintiffs in Group 1 were entitled to benefits, the Plan Administrator correctly determined that the sale of the TRB Division did not constitute a "layoff" or "a permanent shutdown of the plant." Because the Plan does not define "layoff" or "permanent shutdown," the Plan Administrator used the plain meaning of the terms. The Plan Administrator concluded that for a "layoff" to occur, the Plaintiffs had to lose employment. (Motion to Dismiss, Exhibit 3 at 2). Similarly, the Plan Administrator concluded that for a "permanent shutdown" to occur, the plant had to close. *Id.*

The Plan Administrator's decision is supported by Sixth Circuit case law. The Sixth Circuit in *Rowe v. Allied Chemical Hourly Employees' Pension Plan,* 915 F.2d 266, 269 (6th Cir. 1990), addressed this exact issue. In *Rowe,* employees brought an ERISA action against their former employer arguing that when the former employer sold the facility to a third party the employees were "laid off" under the terms of the pension plan and entitled to special pension benefits. The Sixth Circuit examined the meaning of the term "laid off" and concluded the employees were

not entitled to special benefits because the sale of a plant did not constitute a layoff:

> However, it is clear that, even under a *de novo* interpretation of the Allied Plan, the Group 1 plaintiffs' separation from Allied and immediate employment with Armco upon the sale of the Ashland Plant did not constitute a layoff. This circuit has held, in a de novo review of a severance pay plan, that separation from one employer followed by immediate employment with a successor employer does not constitute a layoff.

Id. at 269.

Similarly, the Sixth Circuit in *Anderson v. Ideal Basic Industries,* 804 F.2d 950, 953 (6th Cir. 1986), concluded that it was reasonable for union negotiators to believe that members were not entitled to termination benefits because the sale of a plant followed by continued employment does not constitute a layoff or plant shutdown. *See also Eret v. Continental Holding, Inc.,* 838 F. Supp. 358 (N.D. Ill. 1993) (the common meaning of "shutdown" is the "cessation or suspension of an activity or function: usually stoppage of work in a factory." *Id.* at 367 (citing Webster's Third New International Dictionary (1986)); *Sly v. P.R. Mallory & Co.,* 712 F.2d 1209, 1211 (7th Cir. 1983); *Bradwell v. GAF Corp.,* 954 F.2d 798 (2d Cir. 1992) ("[I]n the context of the sale of a business where the buyer retains the former owner's employees, it would give a windfall to award severance pay to employees who never changed their jobs and were never out of work." *Id.* at 801).

In the present case, SKF sold the TRB Division to RBC on June 11, 1999. There was no cessation in operations or unemployment. After the sale, the buyer continued operations at the Glasgow facility and the Plaintiffs

continued to work at that facility as employees of RBC. The sale of the TRB Division to RBC was not a layoff or plant shutdown and did not trigger eligibility for the pension benefits sought by the Plaintiffs.

Plaintiffs argue in their response to the motion to dismiss that Rowe does not apply in the present case because the employees in *Rowe* were hired by a "successor employer." Plaintiffs argue that because SKF did not secure any agreement from RBC to protect the Plaintiffs' pension benefits or to merge the SKF pension plan with a RBC pension plan, RBC was not a successor employer as that term must be defined within the context of the *Rowe* opinion. Similarly, Plaintiffs argue that because thirteen of the Plaintiffs did suffer a disruption of wages consisting of a pay cut of $3.00 immediately upon becoming employees of RBC and continuing thereafter, RBC could not qualify as a successor employer under *Rowe.* In addition, these Plaintiffs lost between one and two weeks of vacation when they became RBC employees. Plaintiffs have misconstrued *Rowe.* It was the "immediate employment" with the new employer on the sale of the facility that was the key to the decision. Specifically, the Sixth Circuit stated that "it is clear, that even under a *de novo* interpretation of the Allied Plan, the Group 1 plaintiffs' separation from Allied and *immediate employment* with Armco upon the sale of the Ashland Plant did not constitute a layoff." *Rowe,* 915 F.2d at 269.

While the Court does not believe that *Rowe* requires the Court to compare or examine the terms of RBC's pension plan or its wage rates to decide whether it was arbitrary and capricious for the Plan Administrator to

deny the benefits, the Court will discuss this argument by Plaintiffs briefly. In the Labor Agreement,[2] RBC "agree[d] to continue all benefits in the labor contract [with SKF]" and, specifically with respect to pension benefits, committed to providing a pension plan "equivalent" to the SKF Pension Plan. *See* Labor Agreement at 64, Plaintiffs Response. Significantly, according to the portions of the Labor Agreement cited by Plaintiffs, only individuals who actually retired from SKF were subject to a lower hourly pay rate and lost vacation time. *Id.* at 65. Plaintiffs have cited no case law to support any contention that retirement, a voluntary decision, is equivalent to a layoff.

---

[2] Defendant challenges whether the Court should consider the RBC Labor Agreement because the agreement wasn't referenced in the complaint and because the Plaintiffs have failed to allege that they presented the Labor Agreement to the Plan Administrator for consideration in deciding their claim. First, where a nonmoving party has attached matters outside the pleadings for consideration, the Court could properly construe this motion as a motion for summary judgment and consider the RBC Labor Agreement. *Shelby County Health Care Corp. v. Southern Council of Indus. Workers Health and Welfare Trust Fund,* 203 F.3d 926, 931-32 (6th Cir. 2000). Whether the Court considers this motion as a motion to dismiss or a motion for summary judgment, the conclusion that the Plan Administrators' interpretation of the Plan was not arbitrary and capricious would be the same.

Second, because this case is reviewed under an arbitrary and capricious standard, the Court recognizes that it must base its determination only upon a review of the materials contained in the administrative record. However, at this stage of the litigation, the Court is not aware if the RBC Labor Agreement was presented to the Plan Administrator by the Plaintiffs. However, for purposes of addressing the Plaintiffs' argument on this issue, the Court will assume that the Plaintiffs did present the Labor Agreement to the Plan Administrator. As discussed above, even considering the RBC Labor Agreement, the Court would still conclude that the Plan Administrator's interpretation of the Plan and denial of benefits was not arbitrary and capricious.

Therefore, under even the Plaintiffs' construction of *Rowe,* RBC is a successor employer of SKF.[3]

Under *Rowe,* 915 F.2d at 269, it is clear that an employee who continues employment with a purchasing corporation has not experienced a "layoff" by the original employer. The SKF Plan Administrator's interpretation of the term "layoff" to require the actual loss of employment, not merely the termination of an employment relationship with the existing employer, was reasonable in light of the Plan provisions; and as a result, the decision to deny benefits was not arbitrary and capricious. Accordingly, Plaintiffs' claims that they are entitled to benefits under Section 4.05 of the Plan fail as a matter of law and must be dismissed.

Claims under Section 4.02 of the Plan and Paragraph 3 of the MOU

Plaintiffs concede in their Response to the Motion to Dismiss that the Claims by the Group 2 Plaintiffs under this section should be dismissed.

---

[3] Plaintiffs also cite *Barbour v. SKF USA Inc.,* Civil Action No. 1:00CV-80-R, in which the district court held that certain Members of the Pension Plan for Salaried Employees of SKF were entitled to immediate unreduced pensions in connection with the sale of the TRB Division. Section 4.02(b) of the Salaried Plan provides an immediate unreduced pension to a Salaried Plan Member whose active service with an Employer ceases by reason of "an involuntary termination except for cause." Because benefits under the sections cited by Plaintiffs in the present case are payable only upon a layoff or plant shutdown, and not "involuntary termination," the *Barbour* decision is inapplicable.

Claims under Section 4.02 and 2.33303

Plaintiffs in Group 3 seek unreduced pensions as of the date they first become eligible for the pensions based on sections 4.02, 2.3303(c) or (d) and Attachment "A" of the Plan. Section 4.02 provides an immediate unreduced pension to employees who have completed at least 30 years of Benefit Service and are 55 years of age at termination of employment. Additionally, Section 2.3303(c) and (d) and Attachment "A" provide additional vesting service credit for the lesser of 3 years or the expiration of a laid-off employee's recall rights.[4] However, Section 2.3303(c) and (d) only apply when the individual has experienced a layoff. *See Ross v. Pension Plan for Hourly Employees of SKF Industries Inc.,* 847 F.2d 329, 334-35. (6th Cir. 1988). As discussed above, Plaintiffs were not laid off; rather, they continued to work for RBC after the sale. *Rowe,* 915

---

[4] Section 2.3303(c) and (d) provides: . . .

Vesting Service shall not be considered interrupted by, and shall include:

(c) any period of layoff up to the period shown in Item 2.3303(c) on Attachment "A" for the Location at which a person has been most recently employed (or up to the expiration of his recall rights, if sooner) for a person who was credited with less than ten years of service on an Employer's seniority list as of the starting date of the layoff, provided he returns to work before the expiration of his recall rights; and

(d) any period of layoff of up to the period shown in Item 2.3303(d) on Attachment "A" for the Location at which a person has been most recently employed (or up to the expiration of his recall rights, if sooner) for a person who was credited with ten or more years of service on an Employer's seniority list as of the starting date of the layoff, whether or not he returns to work before the expiration of his recall rights.

F.2d at 269. Therefore, Plaintiffs' claims based on sections 4.02 and 2.3303 must be dismissed.

CONCLUSION

For the foregoing reasons, the Plan Administrator's decision denying pension benefits, which was based on the plain meaning of the terms "layoff" and "permanent shutdown of the plant," was not arbitrary and capricious. **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss [DN 4] is **GRANTED.** A judgment shall be entered consistent with this Memorandum Opinion and Order.

This the 12 day of June, 2003.

/s/ Joseph H. McKinley, Jr.
Joseph H. McKinley, Jr.
Judge, United States
District Court

cc: counsel of record
Hayward
Roark
Kimball
Owsley
Sundheim
Rosenthal

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

CIVIL ACTION NO. 1:03CV-31-M

JOYCE MORGAN, et al. **PLAINTIFFS**

v. **JUDGMENT**

(Filed June 17, 2003)

SKF USA, INC **DEFENDANT**

* * *

This matter having come before the Court on a dispositive motion filed by the Defendant, and the Court on this date having issued an Memorandum Opinion and Order granting said motion,

IT IS HEREBY ORDERED that judgment be entered in favor of the Defendant consistent with the Court's Memorandum Opinion and Order and the Plaintiffs' Complaint be dismissed, with prejudice.

THIS IS A FINAL AND APPEALABLE ORDER AND THERE IS NO JUST CAUSE FOR DELAY.

This the 12 day of June, 2003.

JEFFREY A. APPERSON, CLERK

BY: /s/ E.A. Skinner
Deputy Clerk

Copies to all counsel

Hayward	Owsley
Roark	Sundheim
Kimball	Rosenthal

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

JOYCE MORGAN,. et al. Plaintiffs, v. SKF USA INC. Defendant.	CIVIL ACTION NO. 1:03CV31-M

ORDER DENYING PLAINTIFFS' RULE 59(e) MOTION TO SET ASIDE THIS COURT'S JUDGMENT OF JUNE 17, 2003

The plaintiffs having moved to set aside the judgment entered on June 17, 2003 pursuant to Fed.R.Civ.P. 59(e); a response having been filed; and the Court being sufficiently advised;

IT IS ORDERED AND ADJUDGED that the plaintiffs' motion to set aside judgment is DENIED. This is a final and appealable order, and there is no just cause for delay.

/s/ Joseph H. McKinley, Jr.
JOSEPH H. McKINLEY, JR.
Judge, United States
District Court

DATED: August 4, 2003

ENTERED
08/05/03
JEFFREY A. APPERSON,
CLERK

BY /s/ [Illegible]
DEPUTY CLERK

Tendered by:
English, Lucas, Priest & Owsley
1101 College St., P.O. Box 770
Bowling Green, KY 42102-0770
(270) 781-6500

By: /s/ Michael A. Owsley
MICHAEL A. OWSLEY

Clerk, upon entry please serve:

Samuel G. Hayward & Roark (✓)
Philip C. Kimball (✓)
Stephen J. Sundheim and Michael H. Rosenthal (✓)
Michael A. Owsley (✓)

No. 03-6152

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOYCE MORGAN, ET AL., Plaintiffs-Appellants,	)	
v.	)	ORDER
SKF USA, INC.,	)	(Filed Dec. 7, 2004)
Defendant-Appellee.	)	

BEFORE: GUY and SUTTON, Circuit Judges; and CARR,* District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied,

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

* Hon. James G. Carr, United States District Judge for the Northern District of Ohio, sitting by designation.